

JURISDICTION, AUTHORITY, AND VENUE

2. This Court has jurisdiction over this matter pursuant to Sections 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n), and 28 U.S.C. §§ 1331, 1345, 1355.

3. Authority to bring this action is vested in the United States Department of Justice by Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

4. Venue is proper in the Southern District of Texas under Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395 because the claim arose in this district and defendant is located and doing business in this district.

DEFENDANT

5. Defendant Valero Refining-Texas, L.P. is a Texas corporation with its headquarters in San Antonio, Texas.

6. At all times relevant to this action, defendant owned and operated the Valero Refinery West Plant and the containment berm from which oil was discharged in violation of the CWA. The refinery is located at 5900 UpRiver Road in Corpus Christi, Texas.

STATUTORY FRAMEWORK FOR CWA CLAIMS

Civil Penalties

7. Section 311(b) of the CWA prohibits the “discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States [and] adjoining shorelines . . . in such quantities as may be harmful,” 33 U.S.C. § 1321(b)(3), “to the public health or welfare or the environment of the United States,” 33 U.S.C. § 1321(b)(4). This prohibition supports the national objective “to restore and maintain the chemical, physical, and biological

integrity of the Nation's waters." 33 U.S.C. § 1251(a).

8. Section 311(b)(7)(A) of the CWA mandates that "[a]ny person who is the owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty" 33 U.S.C. § 1321(b)(7)(A).

9. Pursuant to its authority under the CWA, EPA has promulgated regulations that define "harmful" quantities of oil to include quantities that "[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines." 40 C.F.R. § 110.3.

10. Section 311(b)(7)(A) of the CWA establishes the civil penalty for violations of Section 311(b)(3) as \$32,500 per day of violation or an amount up to \$1,100 per barrel discharged. 33 U.S.C. § 1321(b)(7)(A); 40 C.F.R. § 19.4 (2006) (establishing, effective March 15, 2004, the civil penalty amounts under Section 311(b)(7) were increased to the listed amounts by the Civil Monetary Penalty Inflation Adjustment Rule).

11. The per barrel penalty is increased to an amount up to \$4,300 per barrel where the violation is the result of gross negligence or willful misconduct. 33 U.S.C. § 1321(b)(7)(D); 40 C.F.R. § 19.4.

CAUSE OF ACTION

Civil Penalties for Violation of Section 311 of the Clean Water Act

12. Plaintiff incorporates by reference all allegations stated in paragraphs 1-11.

13. On June 1, 2006, at least 3,400 barrels of oil discharged into the Corpus Christi Ship Channel from a containment berm at the Valero Refinery West Plant in Corpus Christi, Texas. The discharge resulted in the presence of a sheen of oil on water and caused oil staining

of the adjoining shoreline and marshes along the Ship Channel.

14. Defendant is a “person” within the meaning of Sections 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

15. Defendant is the “owner” and “operator” of an onshore facility from which oil was discharged within the meaning of Section 311(a)(6), 33 U.S.C. § 1321(a)(6).

16. Defendant’s containment berm where the discharge occurred was an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

17. The flow of oil into the Corpus Christi Ship Channel constituted a “discharge” of oil within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

18. The discharge was of “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

19. The discharge was a discharge into or upon “navigable waters” of the United States within the meaning of Sections 311 and 502(7) of the CWA, 33 U.S.C. §§ 1321, 1362(7). The discharge flowed directly into the Ship Channel. The Ship Channel is regularly used in interstate commerce. The Valero Refinery has docks on the Ship Channel for loading and unloading oil to and from tanker ships.

20. The discharge was in a quantity “as may be harmful” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. 110.3. At least 3,400 barrels of oil were discharged.

21. The discharge was a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

22. As a result of defendant’s violation of Section 311(b)(3) of the CWA, Defendant

is liable under Section 311(b)(7)(A) for a civil penalty of up to \$1,100 per barrel discharged, or, if it is established that the violations are the result of gross negligence or willful misconduct, a penalty of up to \$4,300 per barrel discharged under Section 311(b)(7)(D).

23. In April 2004, at least 8,000 gallons of oil were discharged into the Corpus Christi Ship Channel from the same containment berm when a portion of the berm failed and spilled its contents into the waterway.

REQUEST FOR RELIEF

WHEREFORE, plaintiff, the United States of America, respectfully requests that this Court:

A. Enter judgment against defendant and award the United States civil penalties in an amount up to \$1,100 per barrel of oil discharged for the discharge alleged above, or if it is established that the discharge was the result of gross negligence or wilful misconduct, in an amount up to \$4,300 per barrel discharged;

B. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

/s/ Ronald J. Tenpas
RONALD J. TENPAS
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

/s/ Jason T. Barbeau
JASON T. BARBEAU
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-8908
Facsimile: (202) 616-6584
E-mail: jason.barbeau@usdoj.gov

DONALD J. DeGABRIELLE, JR.
United States Attorney

/s/ Charles Wendlandt
CHARLES WENDLANDT
Assistant United States Attorney
Southern District of Texas No. 12172
Texas Bar No. 21171500
800 N. Shoreline, Suite 500
Corpus Christi, Texas 78401
Telephone: (361) 888-3111
Facsimile: (361) 888-3200
E-mail: Chuck.Wendlandt@usdoj.gov

Attorney-in-Charge for Plaintiff

OF COUNSEL:
Amy L. Salinas
Office of Regional Counsel, Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733